

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE, SIERRA
CLUB, and IDAHO CONSERVATION
LEAGUE,

Plaintiffs,

v.

ANDREW WHEELER,¹ in his official capacity
as Acting Administrator of the United States
Environmental Protection Agency, and R.D.
JAMES,² in his official capacity as Secretary of
the Army for Civil Works,

Defendants.

Case No. 2:15-cv-01342-JCC

DECLARATION OF JAMES D. DEWITT

I, James DeWitt, declare the following on the basis of personal knowledge to which I am
competent to testify.

¹ Please note that pursuant to Fed. R. Civ. P. 25(d)(1), Andrew Wheeler, Acting Administrator of the U.S. Environmental Protection Agency, is substituted as a defendant for Scott Pruitt, who was substituted for Gina McCarthy.

² Please note that pursuant to Fed. R. Civ. P. 25(d)(1), R.D. James, Secretary of the Army for Civil Works, is substituted as a defendant for Jo-Ellen Darcy.

1 1. I submit this declaration in support of the Idaho Conservation League (“ICL”) in
2 the above-captioned case. I am a resident of the State of Idaho, and I live on N. 20th Street in the
3 city of Boise. I have lived in Idaho for three years, and in Alaska from 1954-2015 before that. I
4 have been a member of ICL since approximately 1995, when I originally joined with my wife
5 who is an Idaho native. I currently serve on ICL’s Board of Directors.

6 2. The Clean Water Act’s protections are important to me because I am a lifelong
7 outdoor enthusiast, and I care deeply about wildlife that depends on clean water. Most of my
8 recreational activities involve water. I am an avid birder and bird photographer, and many of the
9 birds I like to observe and photograph are found most frequently by bodies of water. I am also a
10 catch-and-release fly fisherman. These days, I enjoy taking day hikes along wild rivers since my
11 backpacking days are behind me. I also used to be an enthusiastic whitewater canoeist, although
12 I haven’t done that in years due to physical limitations. However, one of the big draws of moving
13 to Boise was the Greenbelt trail system along the Boise River, and my wife and I are planning a
14 float trip down the Boise River later this summer.

15 3. I also volunteer for conservation groups like ICL because I am motivated to
16 protect the places and wildlife I care about. During the few years I have lived in Idaho, the focus
17 of my volunteer activities with ICL has included addressing pollution from the old Triumph
18 Mine site, which is an abandoned gold and silver mine that is leaching heavy metals into
19 wetlands and the East Fork of the Big Wood River, a tributary to the Big Wood River. I am
20 concerned that the state of Idaho has not complied with the Clean Water Act by obtaining
21 permits that would address the discharges of arsenic and other pollutants from that site to
22 wetlands neighboring the river. I have supported efforts by non-governmental agencies like
23 Advocates for the West to force the state of Idaho to comply with the law. I am also interested in
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1 volunteering to help the opposition to the proposed American CuMo mine, which would be built
2 on the headwaters of the Boise River. Later this summer, I will be participating an aerial and
3 ground inspection of areas that would be affected by the CuMo project. The CuMo mine
4 proposal calls for a dammed tailings reserve to store the enormous amount of waste and spoil
5 that the proposed mine would produce. We know from experience that this tailings reserve will
6 leach at some point, or the dam will breach, and the waste will contaminate the river. The Boise
7 River runs through town and helps provide my drinking water supply, and the waters in which I
8 float and fish, so I care a lot about protecting it.

9 4. In addition to being a member, volunteer, and board member of ICL, I was also
10 involved with the Alaska Conservation Foundation until last year, when I finished my final term
11 on their board. My volunteer work with that group in Alaska focused extensively on water and
12 the protection of salmon. Salmon are everything in Alaska. You are what you eat, and I grew up
13 eating salmon. From age 4 to 60, salmon have been an important part of our family's diet. In
14 Bethel, AK where I lived from 1954-1959, salmon was the only form of fresh meat you could get
15 unless a moose wandered by. As a species, salmon are very intolerant of mining waste,
16 especially copper, among other things. While living in Alaska, I saw firsthand the harm that can
17 be caused to salmon and other fish when their waters are polluted by mining wastes. As a result
18 of my interest in protecting salmon runs, I worked on efforts to stop the proposed Pebble Mine in
19 Bristol Bay, Alaska, home to one of the last and most abundant, healthy wild salmon runs. I also
20 volunteered on a project to protect roadless areas in the remaining old growth in the Tongass
21 National Forest, and to stop a plan to relocate the Chuitna River in southcentral Alaska so that
22 coal could be extracted from beneath it.

1 5. Birds are at the center of my conservation motives. I have been a birder for about
2 25 years. I have birded all over the Western Hemisphere, from Antarctica to Point Barrow,
3 Alaska; from Florida to Gambell on the northwestern tip of St. Lawrence Island in the Bering
4 Sea. I also enjoy photographing birds as much as birding, and have more than three terabytes of
5 bird photos on my computer. Birds are the canary in the coal mine for the environment. Their
6 health reflects the health of the environment in which they live, winter, breed and migrate.

7 6. Migratory birds, and most North American birds are migratory, depend on water
8 being available north and south along their routes. If water is not available at certain points, the
9 birds are dead. It is that simple. Many species of birds, from herons like American Bitterns to
10 rails like Sora, spend their entire lives in wetlands—they are what we call wetland obligate
11 species. Shorebirds, waterfowl, cranes, and many others are all dependent on wetlands and other
12 bodies of fresh, estuarine and salt water. This is one reason why clean waters and wetlands are so
13 important to me.

14 7. I care greatly about the protection of the various wetlands and similar waters at
15 our favorite birding locations, as well as the birds who depend on them. One of our favorite spots
16 for my wife and me to bird is here in Idaho, not far from our home. While there are three "Camas
17 Prairies" in Idaho, this is the one along Camas Creek on U.S. 20 and is called the Camas Prairie
18 Centennial Marsh. We like to go birding there to look for and photograph some of the 167 or so
19 bird species that have been seen in the area. I visit Centennial Marsh six to ten times a year. The
20 marsh is located near the headwaters of Camas Creek, and spectacular numbers of Camas lilies
21 bloom there some years. It is a wetland area formed by snowmelt, similar to many others in this
22 area. Many of the good wetlands that support extended birding in Idaho and Oregon are in
23 mountain valleys oriented east to west between mountains that collect a lot of snow. The snow
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1 on the south-facing mountains melts and runs down first, followed later in the year by the snow
2 in the mountains on the north side of the valley. This allows an area that would otherwise be arid
3 to be a wetland for extended periods.

4 8. My wife and I also like to go birding in Marsh Creek, in Sawtooth National
5 Recreation Area, which is a wetland in the headwaters of the main and Middle Fork of the
6 Salmon River in Idaho. This area is nice for birding because it supports more alpine species. We
7 visit Marsh Creek two to three times a year, as recently as July 7 of this year. We plan to
8 continue visiting Marsh Creek frequently in the future to look for birds, for as long as we are
9 able.

10 9. Malheur National Wildlife Refuge in Oregon is another of our favorite Pacific
11 Northwest birding destinations. This is a desert refuge with lakes and wetlands, and the same
12 east-west snowmelt effect we've observed at the Camas Prairie Marsh can be seen here, with
13 snow melting from the Blue Mountains to the north and Steens Mountain to the south. My wife
14 and I have visited the Malheur Refuge approximately 20 times, from 1996 to 2018, most recently
15 in June. When we visit, we like to look for and photograph migrating songbirds, ibis, swans and
16 other waterfowl, and as many as possible of the other 325 species of birds that have been seen at
17 Malheur. We will be back to Malheur again next spring and possibly even this autumn.

18 10. In Alaska, it's hard to choose the very best birding. Among locations you can
19 drive to – most of Alaska is roadless – the Amphitheater Mountains on the east end of the Denali
20 Highway would be a candidate. Down a gravel road on the south face of the Alaska Range, there
21 is an extensive montane wetlands area and clean water stream called Rock Creek. Most rivers in
22 Alaska are glacial fed – this means that the water carries immense amounts of pulverized rock
23 called "glacial flour" – so clear water streams are prized. Rock Creek is a gorgeous, clear water
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1 stream that runs down into the Tangle Lakes, and the whole area is a marsh. The Tangle Lakes
2 are alpine lakes in the Amphitheater Mountains, and with Rock Creek are the headwaters of the
3 Delta River. The Amphitheater Mountains are made of beautiful granite and basalt that have
4 been exposed by glaciers which are now gone but have left spectacular cirques, and moraines in
5 their wake. It is a wonderful habitat for birds. There are birds that come from as far as Africa and
6 Southeast Asia to breed in Rock Creek Valley. I have visited Rock Creek dozens of times, from
7 about 1995 – 2015.

8 11. Throughout my years of birding, fly-fishing, and volunteering for conservation
9 organizations, I have seen many beautiful, healthy waters damaged or destroyed by pollution. In
10 my experience, the wetlands where I bird in Idaho, Oregon, and Alaska are most threatened by
11 mining pollution and irrigation associated with agriculture. Diversion of wetland waters to
12 mining and agriculture seriously hurts birds, especially in spring and fall migration, which hurts
13 me too. For example, I would like to see a more efficient irrigation system at place like
14 Centennial Marsh, because I have seen how excessive irrigation hurts birds and other wildlife
15 that depend on the water.

16 12. A substantial percentage of North American bird populations are either
17 endangered or threatened. Anything that makes it tougher for the birds to survive threatens the
18 birds further, whether that be habitat loss or pollution of the water that they need during
19 migration. We are going to lose our North American birds if we do not start doing a better job of
20 respecting their needs. One great side effect of protecting birds is that if you do a good job of
21 protecting what the birds need, you do a good job taking care of the environment in general. I
22 believe this is especially true in the case of water protection because clean water is one of birds'
23 greatest needs, and it is critical for so many other species of wildlife as well.

1 13. One of the ways I've been able to observe and measure degraded water quality in
2 the places where I recreate is through the fish that I catch. As a fly fisherman, I've seen many
3 fisheries lost to pollution from mining, for example. In Alaska, my wife and I had a cabin off the
4 north fork of the Chena River that runs through downtown Fairbanks. The cabin was 30 feet
5 from the river and it used to be that you could catch Arctic Grayling 18 inches long. Grayling act
6 as something of a litmus test for healthy water, because they are very intolerant of pollution.
7 There is no mining along the Chena River. By contrast, there was extensive placer mining along
8 the Chatanika River (an Athabascan Indian place name, reportedly meaning "River of Little
9 Sticks"). Unfortunately, a lot of relatively small-scale gold mining in the headwaters increased
10 the sediment load in the river. This sediment caked the gravel on the bottom of the stream,
11 blocking access for the Arctic Grayling who depended on that gravel to spawn. As a result, the
12 Grayling were gone within five years. I had to stop fly fishing for Grayling after they
13 disappeared, so I stopped visiting this river. The Grayling population did not recover until the
14 federal government imposed regulations on the placer miners, including requiring sediment
15 settling ponds, which reduced the sediment load.

16 14. Another place that I used to fish is Valdez Creek, a clearwater tributary of the
17 Susitna River. There was a large-scale gold mining operation there, operated by Denali Mining
18 Company and Valdez Creek Joint Venture, and the gold was located in the bottom of the creek,
19 so they strip-mined the creek. After they finished mining, the mining operation planted non-
20 native grasses like Kentucky Bluegrass as part of its attempted remediation, declared bankruptcy,
21 and disappeared. What is left up there looks like a moonscape. The bluegrass died, of course,
22 because bluegrass is not an appropriate plant for the area. Valdez Creek used to be a terrific
23 grayling fishery in a pretty little valley, and the last time I was there that valley looked like the
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1 moon. That is another reason why I am so passionate about reduced Clean Water Act
2 protections.

3 15. One of the big differences between the fisheries in Idaho and the fisheries in
4 Alaska is that in Alaska we were trying to prevent the salmon runs from being damaged by
5 harmful development that would hurt the rivers and tributaries and the fish who live and spawn
6 there, while in Idaho, it is too late for that. Salmon have been mortally damaged here in Idaho,
7 and they are almost all endangered species. I fear it may be too late for many of the genetically
8 distinct populations. We have to get some dams removed, and we have to stop diverting so much
9 of the water flow, and we have to stop dumping agricultural and mining wastes into the rivers in
10 order to clean up their habitat. For example, the reservoirs behind some of the dams on the Snake
11 River, an important habitat for both juvenile and spawning salmon, literally have toxic algae
12 blooms due to a mixture of agricultural pollution and stagnant, unnaturally warm water caused
13 by the dams.

14 16. I understand that the Clean Water Rule that went into effect in 2015 specifically
15 defined tributaries and adjacent waters that neighbor larger waters, such as wetlands. The Clean
16 Water Rule applied the protections of the Clean Water Act to those waters that met those
17 definitions of tributaries and adjacent waters, even when the waters were not directly connected
18 to another water through a surface connection. I know that in 2018, EPA and the Army Corps of
19 Engineers published another rule called the Applicability Date Rule that adds an applicability
20 date of February 6, 2020 to the Clean Water Rule. That means the Clean Water Rule will not be
21 applied for the next two years, leaving the waters I care about at greater risk of unregulated
22 heavy metal mining, excessive damming of streams, and agricultural pollution such as polluting
23 runoff. It also means it is less clear to me and others who care about protecting waters which
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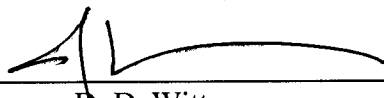
1 waters will be given protection under the Clean Water Act, and which won't. Losing the
2 certainty that the Clean Water Rule provided harms members of the public who care about
3 waters, such as myself, because we will now be less able to focus our advocacy efforts knowing
4 which waters are automatically protected and which are not.

5 17. I worry about the water, and the fish and birds that depend on them, on several
6 levels. Absent protection under the Clean Water Act, there will be ongoing damage to already
7 polluted bodies of water. Moreover, if the EPA and Army Corps of Engineers do not apply the
8 Clean Water Act to the currently unpolluted waters I cherish most, they could succumb to
9 harmful development and their habitat value for birds and fish could be destroyed. I am
10 especially concerned about wetlands and tributaries such as Camas Prairie Marsh in Idaho and
11 Rock Creek in Alaska because I know that the Clean Water Rule offered specific protections for
12 wetlands and tributaries in its definitions, and those protections are now gone for two years. If
13 these places are polluted, I will not be able to enjoy birding in these places any longer. Similarly,
14 I worry about places like the wetlands near the East Fork of the Big Wood River, where I am
15 trying to help protect the water from dangerous toxins discharged by the abandoned Triumph
16 Mine. These places are hydrologically important, and I would hate to see them harmed by the
17 Applicability Date Rule's removal of the Clean Water Rule's protections.

18 18. The Clean Water Act inarguably works – we just have to let it. I wholly support
19 the Clean Water Act's provisions and purpose, and believe it should be broadly applied to waters
20 in this country. That's why I support the ICL's efforts to become involved in this litigation.
21 A court order vacating the Applicability Date Rule would redress my concerns about the risks to
22 the waters I care about because it would restore the protections of the Clean Water Rule for
23 tributaries and wetlands.

1
2 I declare under penalty of perjury that the foregoing is true and correct.

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4 Executed this 19th day of July of 2018.

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6 
7 _____
8 James D. DeWitt